

Sexual Harassment



*It could cost you your job...
and a whole lot more*

Agricultural Research Service
U.S. Department of Agriculture

What is Sexual Harassment?

Sexual Harassment is a violation of Title VII of the Civil Rights Act of 1964 (as amended) which prohibits discrimination on the basis of sex. Sexual harassment is also **a conduct issue** covered by the Department's and Agency's conduct regulations. Finally, sexual harassment is a prohibited personnel practice when it results in personnel decisions for or against an employee on the basis of conduct not related to performance, e.g., sex discrimination. The Equal Employment Opportunity Commission (EEOC) has defined sexual harassment as -

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made either explicitly or implicitly **a term or condition of employment;**
- Submission to or rejection of such conduct is **used as a basis for employment decisions** affecting an individual; or
- Such conduct **interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.**

Sexual harassment violates the Department's conduct regulations which defines sexual harassment as:

Participating in coercive or repeated unsolicited and unwelcome verbal comments, gestures, or physical contacts of a sexual nature; or by using implicit or explicit coercive sexual behavior in the process of conducting agency business; or to control, influence, or affect the career, salary, or job of an employee.

Virtually any sexually-oriented language, conduct, or behavior can be viewed as sexual harassment if it is unwelcome. Remember, it is the impact of the conduct of behavior on the recipient(s) or on the observer(s), **not the intent** of the harasser which determines findings of sexual harassment.

What Type of Conduct or Behavior Constitutes Sexual Harassment?

Sexual harassment takes many forms and may include any or all of the following:

- **Verbal** - unwelcome teasing, insults, innuendos, jokes, remarks, comments, questions or stories of a sexual nature; pressure for dates or sexual favors; promises of career advancement in return for sexual favors; turning work discussions to sexual topics; whistling at someone; kissing sounds; referring to an adult as, "baby," "honey," "doll," or "hunk;" or asking about another person's sexual history.
- **Physical** - unwelcome touching, leaning over, cornering, pinching, patting, rubbing against, stroking; neck massages; or other physical contact of a sexual nature.
- **Visual** - posters, calendars, cartoons, or other material of a sexual nature.
- **Other behavior or conduct** - sexually suggestive looks, staring and looking another person over/ "checking the person out;" gesturing; lip-licking or sticking out tongue in a sexually suggestive manner; letters, telephone calls, giving of gifts or other material of a sexual nature; or communicating in any manner that an employee will be adversely affected if sexual demands are not met.

Related to sexual harassment is sex-role stereotyping (a fixed idea about the roles, abilities, or behaviors attributable to men and women). Although this type of behavior is not illegal, it can lead to sex discrimination and sexual harassment. It also interferes with the accomplishment of duties and generally creates a negative work environment.

Where Can Sexual Harassment Occur?

Sexual harassment can occur anywhere and anytime! It can occur at, near, or away from the workplace, at meetings, conferences, on business trips, over the telephone, and at work-related activities or social functions held during or outside regular working hours.

Who Can Be a Target of Sexual Harassment and Who Can be Charged with Allegations of Sexual Harassment?

Anyone can be a target of sexual harassment or can have allegations of sexual harassment brought against them!

- Targets of sexual harassment and harassers are both male and female. Sexual harassment is not just a women's issue—both men and women suffer from sexual harassment. In fact, approximately one in three employees harassed is a man.
- Targets of sexual harassment and harassers are married, single, divorced, and of all races and ages. They are in all positions, at all grade levels, in all types of appointments, and at all organizational levels. They are from all socio-economic backgrounds, at all educational levels, and in all geographical locations. They are supervisors and managers, nonsupervisor co-workers, Federal employees and non-Federal employees, e.g., contract and vendor employees.
- Frequently, harassers have a history or pattern of sexual harassment.

Sexual Harassment may extend beyond the target of the harassment to other employees. Sexual harassment of one employee may create an intimidating, hostile, or offensive working environment for others or deny another employee a promotion or other career-related benefits. This type of sexual harassment is referred to as third-party liability.

Who Is Responsible for the Prevention of Sexual Harassment?

Every employee of the Department of Agriculture must share the responsibility for preventing sexual harassment. Employees are responsible for their own conduct and must know and support the Agency's policy on sexual harassment. Employees are to become familiar with their rights and responsibilities in preventing and reporting sexual harassment.

Although employees have an important role in preventing sexual harassment, managers and supervisors carry a larger burden of responsibility for ensuring a workplace free from sexual harassment.

Supervisors and managers must:

- Know and enforce the Department's and Agency's policy on sexual harassment;
- Set a clear example of appropriate workplace behavior and communicate zero tolerance for sexual harassment;
- Be aware of what is going on in the workplace and actively monitor for signs of sexual harassment;
- Ensure that employees know the Department's and Agency's policy on the prohibition against sexual harassment and the proper reporting procedures and penalties associated with sexual harassment;
- Take seriously all allegations of sexual harassment and be aware that claims of sexual harassment are not limited to women;
- Take swift and appropriate action against harassers;
- Follow up with employees who have reported sexual harassment to advise them of action(s) taken; and
- Ensure that an employee reporting sexual harassment is protected from any form of reprisal.

What Are the Consequences of Sexual Harassment to the Individual and to the Department of Agriculture?

Harassment can and does destroy lives. Those who become the target of sexual harassment often experience feelings of fear, anger, guilt, intimidation, frustration, anxiety, shame, and powerlessness. They may suffer a loss of self-esteem and self-confidence which affect performance and attendance. Individuals who are sexually harassed frequently blame themselves and become depressed. Many are affected physically and experience high levels of stress, headaches, irritability, loss of sleep, and other physical problems. Equally devastating are the financial, career, and other personal hardships often experienced by those who are sexually harassed.

The loss to the Department in terms of financial and human resources is substantial in several areas—leave usage, reduced individual and group productivity, training costs, and other costs related to turnover of personnel. Sexual harassment reflects poorly on the integrity of the Department/Agency and adversely affects the morale of employees, supervisors, and managers who strive to promote ethical standards of conduct in the performance of their official duties.

The consequences to individuals accused of sexual harassment are significant. A Federal employee can be disciplined up to and including removal from employment or found personally liable. Additionally, the Civil Rights Act of 1991 provides further remedies for intentional discrimination (e.g. sex) including compensatory damages up to \$300,000 and jury trials. Traditional remedies such as back-pay and reinstatement are available.

How Common is Sexual Harassment in the Federal Workplace?

The Merit Systems Protection Board (MSPB) conducted a study in 1994 in order to continue to examine the nature, amount, and impact of sexual harassment in the Federal workplace. The survey results represent the experiences and opinions of nearly 1.7 million permanent civil service employees. The MSPB survey findings show 44 percent of women and 19 percent of men reported that they had experienced some form of unwanted sexual attention during the preceding two years. Thirty-seven (37) percent of women and 14 percent of men said they had experienced unwanted sexual teasing, jokes, remarks, or questions. Only about six percent of the respondents who had experienced sexually harassing behaviors took formal action in response to the harassment.

In 1998, there were three major rulings of the U.S. Supreme Court which also impact sexual harassment in the Federal workplace. In one case, the question was whether sexual harassment in the workplace violates Title VII when the harasser and the harassed employee are of the same sex. The Supreme Court ruled *that same-sex sexual harassment is a violation of the Title VII*. The practical effect of the other two decisions *require employers to adopt sexual harassment policies and train their supervisors in preventing and eliminating sexual harassment in the workplace and employers must adopt a proactive stand for the investigation and resolution of sexual harassment complaints and ensure that all employees are aware of the complaint process.*

If Sexually Harassed, What Should You Do?

As an employee of the Department of Agriculture, **you have a legal and ethical right to work in a work environment free from any form of sexual harassment or unwelcome sexual attention.** Recognize sexual harassment and confront it. Know your rights and responsibilities and whom to go to for advice and assistance in stopping the harassment. Finally, know your rights in pursuing informal and formal remedies.

If possible, it is recommended that you confront the harasser directly to stop the behavior. **Use straight talk—simply tell the harasser to “Stop” or “No” clearly** and firmly, without smiling and without apologizing. Make it clear that the behavior is **unwelcome** and state how the behavior is affecting you. For example, say:

“I FEEL UNCOMFORTABLE WHEN YOU DO/SAY _____.” and/or
“I CANNOT CONCENTRATE ON MY WORK WHEN YOU DO/
SAY _____.”

Then request a change in behavior:

“PLEASE STOP DOING/SAYING _____, NOW.” If the harassment continues after you have communicated your discomfort verbally, you may want to consider writing a letter to the harasser. Be specific as to what was said/done by the harasser, what you found offensive or objectionable, and how it made you feel, when and where the behavior occurred, and what you said to the harasser to communicate **the unwelcome nature of the behavior.** State that you want the harassment to stop and that you consider the conduct to be sexual harassment. Keep a dated copy of the letter and tell someone that you have sent it. A copy may be sent to your supervisor, the harasser’s supervisor, or to a union official, with or without the harasser’s knowledge.

Maintain a detailed journal documenting every incident of sexual harassment —to include **the name of the harasser; what** specifically was said/done by the harasser; **where** and **when** the harassment took place (location, date, and time); **who**, if anyone, was told about the harassment; the names of witnesses; what was said to the harasser to communicate the unwelcome nature of his or her conduct; and the harasser’s response when told to stop. Keep a copy of all letters or other written materials received from the harasser. Document telephone calls or visits to your office, home,

or any other location(s) where the harassment occurs. Be sure to document instances of sexual harassment to other individuals. During a formal inquiry or investigation, you may be asked for written documentation. Keep documentation in a safe place.

Seek emotional support—talk to friends, coworkers, relatives, or other individuals who may be able to provide support. Use the agency's employee assistance program or other counseling services. Finally, support others who tell you that they are being sexually harassed.

The decision to take action and the type of action to take is a very personal one based on the circumstances and the individuals involved. If you feel you cannot confront the harasser directly, report the conduct to your supervisor or to the harasser's supervisor. You may also seek assistance or advice from a REE, EEO Counselor at 202-720-3410 in the Washington, DC area, or 1-800-340-4289 outside the Washington, DC area, or a union official.

What Formal Actions Can Be Taken-Whom Do I Go to When Informal Actions Fail?

Formal avenues to follow in reporting sexual harassment are:

- File a complaint through the Equal Employment Opportunity complaint process, contact a REE, EEO Counselor at 202-720-3410 in the Washington, DC area, or 1-800-340-4289 outside the Washington, DC area, or a union official.
- File a grievance under applicable negotiated agreement procedures (contact a designated union representative).

Employees may also call the USDA Inspector General (OIG) "Hotline" (calls may be made anonymously). In the Washington, DC area, call (202) 690-1622 or 690-1202 (TDD), outside of the Washington, DC area, call 1-800-424-9121.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

References

Section 703 of Title VII of the Civil Rights Act of 1964, as amended and the Civil Rights Act of 1991.

Title 29, Code of Federal Regulations, Part 1614.

REE Policies and Procedures Issuance Number 461.5, Misconduct, Discipline and Adverse Actions, 8/12/93.

USDA Departmental Regulation Number 4300-7, Processing EEO Complaints of Discrimination, 3/3/99.

EEOC Notices providing policy guidance on current sexual harassment issues.

Sexual Harassment in the Federal Government – An Update (MSPB Report to the President and the Congress, November 1995).

MSPB and EEOC cases involving findings of sexual harassment and case law developing at different levels within the U.S. court system.